118-23

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1291.

THE UNITED STATES, APPELLANTS,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 15, 1886.

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1 United States Court of Claims. December term, 1884.

THE CENTRAL PACIFIC RAILROAD COMPANY
against
THE UNITED STATES. } No. 14711.

I.—*Petition—filed Nov.* 24, 1885.

To the honorable Chief Justice and judges of the Court of Claims:

The petition of the Central Pacific Railroad Company respectfully sets forth its claim as follows:

First. The claimant is, and at all times since August 22, 1870, has been, a corporation duly organized under the laws of the State of California, and formed by successive consolidations of the Central Pacific Railroad Company of California, the San Francisco and Oakland Railroad Company, the Yuba Railroad Company, the Western Pacific Railroad Company, the San Francisco and Alameda Railroad Company, the San Francisco, Alameda and Stockton Railroad Company, the California and Oregon Railroad Company, the Marysville Railroad Company, the San Joaquin Valley Railroad Company, and the San Francisco Bay Railroad Company, and is, and at all such times has been, entitled to all the rights of the Central Pacific Railroad Company of California under the acts of Congress hereinafter mentioned and referred to.

2 Said Central Pacific Railroad Company of California was incorporated on June 28, 1861, under the laws of the State of California to construct and operate a railroad within said State, and is the corporation so named in the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and in the acts amendatory thereof approved July 2, 1864, March 3, 1865, and July 3, 1866.

Second. Said Central Pacific Railroad Company of California duly accepted the terms and conditions expressed in the said acts of July 1, 1862, and July 2, 1864, and thereafter, and on the 8th day of October, 1864, filed amended articles of association under the laws of the State of California, and with the aid of the grant of lands in alternate sections, and of bonds issued to it as in said acts of 1862 and 1864 provided, constructed a portion of the railroad and telegraph line provided for in said acts, extending from Sacramento City, in California, to a point about five miles westward of Ogden Station, in Utah Territory.

It assigned to the Western Pacific Railroad Company, incorporated under the laws of California, its right under said acts to construct with said aid the portion of the railroad and telegraph line provided for therein, extending from Sacramento City to the city of San José, in California, which company did thereupon with said aid construct the same, and was thereafter, on June 23, 1870, consolidated with said Central Pacific Railroad Company of California.

The claimant on June 30, 1874, leased from the Union Pacific Railroad Company, mentioned in said acts, that part of the railroad and telegraph line (five miles in length) constructed by said last-mentioned company

with the aid of lands and bonds as aforesaid, extending from the easterly terminus of the railroad and telegraph line constructed by the said Central Pacific Railroad Company of California to a point at or near Ogden Station aforesaid.

3 Third. Of the railroad and telegraph line constructed by the said Central Pacific Railroad Company of California as aforesaid with aid of lands and bonds, there was 737.50 miles. Of that so constructed by the said Western Pacific Railroad Company there was 123.16 miles. Of that so constructed by the Union Pacific Railroad Company, and leased by the claimant, there was five miles. The total extent of such aided railroad and telegraph line acquired by the claimant as aforesaid and possessed by it from June 30, 1874, to April 1, 1885, is 865.66 miles.

Fourth. Prior to May 7, 1878, the claimant, in addition to the lines mentioned in the last article had become by consolidation the owner of certain other railroad lines in the State of California described in the exhibit annexed marked A, none of which have been in any manner aided by the defendants, except that the California and Oregon Railroad Company received a grant of lands under the conditions expressed in the act of Congress approved July 25, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

Fifth. Prior to May 7, 1878, the claimant leased from the various corporations owning and possessing the same the railroad lines described in the exhibit annexed marked B, none of which have been in any manner aided by the defendants, except that the Southern Pacific Railroad Company has received grants of land under the conditions expressed in the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and the joint resolution approved June 28, 1870, and in the act approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

4 Sixth. After May 7, 1878, the claimant leased from the various corporations owning and possessing the same the railroad lines described in the exhibit annexed, marked C, none of which have been in any manner aided by the defendants.

Seventh. The claimant has operated the several railroad and telegraph lines before mentioned during the whole or some part of the period from May 7, 1878, to April 1, 1885, and has rendered service to the defendants, at their request, upon the portions thereof described in Exhibits A, B, and C, for which claimant has received no compensation, but for which there is due to it from the defendants upwards of $900,000.

Eighth. On November 29, 1879, the Secretary of the Treasury, in Circular number 168, directed that, in accordance with section 5260 of the Revised Statutes of the United States, no payments should thereafter be made, directly or indirectly, in favor, among others, of "Central Pacific Railroad from Ogden, Utah, to San José, California, 835.66 miles."

On June 24, 1880, the Acting Secretary of the Treasury, in Circular number 55, published an opinion of the Attorney-General, for the infor-

mation of all concerned, in relation to withholding payments from Pacific railroad companies for transportation services performed for the Government, in which, in reply to the question whether full compensation should be made for transportation service over those portions of roads owned, leased, controlled, and operated by the Union and Central Pacific Railroad Companies which were not built by aid of Government bonds, the Attorney-General, after referring to decisions of the Supreme Court (99 U. S., 455–469), concludes as follows:

"In this state of the decisions I advise the retention of all compensation to those roads for services upon such branches, so that the question can be judicially determined."

5 Ninth. On June 27, 1883, the Secretary of the Treasury, after reciting a certain decision of the First Comptroller, directed that, "in accordance with the above decision, the provisions of Circular No. 168 of 1879 and Circular No. 55 of 1880 are modified, so as to permit payments to be made for transportation services performed for any department of the Government over such portions of the several Pacific railroads as have not been built by the aid of Government bonds, and no payments shall be withheld from either of said railroads except for services performed for the Government over the subsidized or aided portions thereof."

On January 12, 1884, the said Secretary, after reciting that it was deemed advisable to submit the question of withholding such payments to Congress, directed that thereafter all balances ascertained by the accounting officers to be due for such services should be certified, without suggestion as to the mode of payment, and thus reported to the Secretary.

Tenth. On September 11, 1885, the Secretary of the Treasury, after reciting a report of the Second Comptroller upon said question, dated August 28, 1885 (recommending, among other things, that the said orders of June 27, 1883, and January 12, 1884, be revoked, and that the amount of compensation due the claimant for Government service on such unaided portions of the roads operated by it audited and not applied by reason of said order of January 12, 1884, or thereafter audited, should be covered into the Treasury and one-half thereof applied to the extinguishment of interest which has accrued on the Government subsidy bonds, and the other half credited to the sinking fund established by the act of Congress approved May 7, 1878, known as the Thurman act), declared that said orders were revoked, and directed that "all compensation now due, or which may hereafter become due, to the Central Pacific Railroad Company for services rendered for the Government will be withheld and applied as indicated in the above decision."

6 On application of the claimant the Secretary of the Treasury subsequently consented to suspend action under that part of said order which directed the withholding and application of all compensation due or to become due the claimant, as recommended in the report or decision of the Second Comptroller, upon the condition, among other things, that the claimant should present the matter in issue to the proper courts for judicial decision, and prosecute the same without unreasonable delay.

The claimant to that end has selected from the mass of accounts involved in said controversy a small portion only thereof, set forth in the exhibit hereto attached, marked D, which have been adjusted by the accounting

officers in their statements of account made, and which include charges for transportation service rendered on certain of the railroad lines owned and leased by the claimants, described in Exhibits A, B, and C, amounting in the aggregate to twenty-two thousand four hundred and fifty-three $\frac{82}{100}$ dollars. The Exhibits A, B, C, and D annexed are to be taken as parts of this petition.

Eleventh. The last-mentioned services were rendered at the defendant's request, at the time and in the manner set forth in Exhibit D, on certain of the unaided lines or parts of lines owned or leased and operated by the claimant, as alleged in articles 4, 5, and 6 of this petition. The charges therefor are made at the regular rates received by the claimant for like service, and are fair and reasonable. The claimant has demanded their payment from the Secretary of the Treasury, who has refused to pay the same to the claimant, and has withheld the same and other large amounts in the same manner due and payable, as hereinbefore set forth, and has declared that such sums shall be covered into the Treasury and applied as aforesaid under the authority of certain acts of Congress in that behalf as alleged.

Wherefore the claimant asks judgment herein for the said sum of twenty-two thousand four hundred and fifty-three $\frac{82}{100}$ dollars.

7 Twelfth. The claimant has always been and is the only party owning and interested in the claim, and is justly entitled to the amount thereof, after allowing all just credits and offsets.

The claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government.

The claimant believes the facts as stated in this petition to be true.

THE CENTRAL PACIFIC RAILROAD COMPANY,
By C. P. HUNTINGTON, *Vice-President.*

McDONALD, SIMONS & BRIGHT,
Claimant's Attorneys, 1419 *F Street, Washington, D. C.*

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Collis P. Huntington, of the city, county, and State of New York, being duly sworn, deposeth and saith that he is the vice-president of the Central Pacific Railroad Company, the petitioner in the foregoing petition named; that he has read said petition and knows the contents thereof, and that he believes the facts stated in said petition are true.

C. P. HUNTINGTON.

Sworn to before me this 23d day of November, 1885.

[NOTARIAL SEAL.] J. F. C. GROW,
42 *Notary Public, New York County.*

8 EXHIBITS.

EXHIBIT A.—*Unaided railroad lines or parts thereof acquired by claimant, as alleged in art. 4 of petition.*

Company consolidated.	Date.	No. of miles operated before May 7, 1878.	Total mileage operated after May 7, 1878.	Remarks.
	1870.			
California & Oregon R. R. Co.	Aug. 22	Roseville to Redding, 151.60.	Roseville to Delta, 190.08.	Chartered to Oregon State line, but not completed.
Western Pacific R. R. Co.	June 23	Niles to Oakland, 24.31.	24.31	Part of this company's line was aided as stated in articles 2 and 3 of the petition. This unaided portion thereof was organized Sept. 25, 1868, as the San Francisco Bay R. R. Co., and consolidated with W. P. R. R. Co. Nov. 2, 1869.
San Joaquin Valley R. R. Co.	Aug. 22	Lathrop to Goshen, 146.08	146.08	Organized Feb. 5, 1868.
San Francisco, Oakland and Alameda R. R. Co.	Aug. 22	Local connections, 14.68.	Local connections, 23.20.	Short suburban lines, including about 3.69 miles of ferry from San Francisco to Oakland and Alameda piers.

9 EXHIBIT B.—*Unaided lines leased prior to May 7, as alleged in art. 5 of petition.*

From what company.	Date.	No. of miles operated before May 7, 1878.	Remarks.
Sacramento & Placerville R. R. Co.	Sept. 1, 1869.	Sacramento to Brighton, 5.64.	On notice. Trackage only.
Stockton & Copperopolis R. R. Co.	Dec. 30, 1874.	Stockton to Milton and Peters to Oakdale, 49.00.	For 30 years.
Northern Railway Co.....	Jan. 1, 1876.	W. Oakland to Delaware St. & Martinez. Extension Woodland to Williams, 74.80.	On notice. After May 7, 1878, was added to San Pablo & Tulare R. R., from Martinez to Tracy, under lease to N. R. Co.; Port Costa to Suisun, Williams to Tehama; in all, 125.34 miles.
California Pacific R. R. Co..	July 1, 1876.	S. Francisco to Sacramento, Napa Junc., to Calistoga, Davisville, to Knight's L'd'g, 139.69.	For 30 years. Part of this line by ferry, from San Francisco to Vallejo, 26.25 miles, was abandoned after May 7, 1878, and ferry from Vallejo Junction to Vallejo, 2 miles, substituted.
Southern Pacific R. R. Co. of Cal.	Sept. 1, 1876.	Huron to Colorado River, 528.61.	Sixty days' notice.
Southern Pacific R. R. Co. of Cal.	Sept. 1, 1876.	Los Angeles to Wilm'ngton, 21.64	" "
Los Angeles & San Diego R. R. Co.	Sept. 1, 1876.	Florence to Santa Ana, 27.60.	" "
Amador Branch R. R. Co ...	Jan. 1, 1877.	Galt to Ione, 27.05 ...	On notice.
Berkeley Branch R. R. Co...	Jan. 1, 1877.	Shell Mound to Beryman's, 3.83.	On notice.
Los Angeles & Independence R. R. Co.	June 4, 1877.	Los Angeles to Santa Monica, 16.83.	On notice.

EXHIBIT C.—*Unaided railroad lines leased after May 7, 1878, as alleged in article 6 of petition.*

From what company.	Total extent miles operated.
S. Pacific R. R Co. of California.....	Mojave to Needles, 240.13.
Western Development Co.	Bridge over Colorado River, .13. On notice.
S. Pacific R. R. Co. of Arizona.....	Colorado River to N. M. Boundary, 383.21.
S. Pacific R. R. Co. of New Mexico.....	N. M. boundary to W. bank Rio Grande, 168.26.
Pacific Improvement Co.....	Bridge over Rio Grande, .23.
Galv'n, Harrisburg & San Antonio R. R. Co.....	E. bank Rio Grande to El Paso, 3.61.

10 EXHIBIT D.—*Audited accounts for transportation service mentioned in Art. 10 of petition*

Date of service.	For what office or department.	From—	To—	No. of passengers or po'nds freight.	Miscellaneous.	Rate.	Amount.	Date.	Amount.	Diff's.	Allowed.			
											Miles.	Aided.	Miles.	Non-aided.
				Passengers.										
Sep. 10, '83	G. L. O	San Francisco	Calistoga	2		$2 70	$5 40							$5 40
Sep. 17 and 27, '83		do	Reno	2		12 05	24 10				154.47	$15 24	89.79	8 86
					Pt. of bill, $180.10		29 50	Oct. 24, '83	$29 50					
Oct. 7 and 13, '83	do	Sacramento	Milton	2	do 311.85	3 10		Nov. 30', 83	6 20		42.33	3 37	35.64	2 83
July, '83	do	Los Angelos	San Francisco	3		23 00	69 00				11.09	1 59	471.18	67 41
July 26, '83		do	Pomona	2		1 75	3 50							3 50
					do 349.20		72 50	Sept. 25, '83	72 50					
Oct. and Nov., '83	do	Sacramento	Junction	3		75	2 25					2 25		
		do	Lone	1			2 20				21.43	87	32.84	1 33
		do	Latrobe	2		2 20	4 40							4 40
		do	Los Angeles	1			20 90				51.21	2 41	393.57	18 49
		Milton	Sacramento	1			3 10				42.33	1 68	35.64	1 42
							32 85	Nov. 30, '83	32 85					
									141 05			27 41		113 64
									*113 64					113 64
G. L. O., sett. 40779, int. civ. wt. 864, M'ch 26, '84, int. $13.70, s. f. $13.71, 1st Compt'rs cert., Feb. 26, '84									27 41			27 41		
Ap'l 29, '84	Geological	Calistoga	San Francisco	5		2 70	13 50							13 50
May 6, '84		San Francisco	Ogden	1			41 03				742.61	36 56	90.74	4 47
							54 53	June 1, '84	54 53			36 56		17 97
									*17 97					17 97
1st Aud., sett. 243122, int. civ. wt. 1625, May 25, '85, int. $18.28, s. f. $18.28, 1st Compt'rs cert., Apr. 25, '85									36 56			36 56		
Oct, '84	do	San Francisco	Napa	1			1 60							1 60
		do	Elmira	1			2 10							2 10
		do	Ogden	1	and 50 lbs. bag'e		44 39				742.61	39 56	90.74	4 83

		Davidsville ...	San Francisco.	1			2 75								2 75
		Delta	....do	1			11 40					18.24	72	279.77	10 68
							62 24	Nov. 1, '84	62 24				40 28		21 96
									*21 96						21 96
1st Aud., sett. 245339,	int. civ. wt. 1630, M'ch 25, '85,		int. $20.14, s. f. $20.14, 1st *Freight.*		Compt'r's cert., Apr. 27, '85.				40 28				40 28		
July, '84	Q. M. D...	Ogden	San Francisco	8,492			143 36					742.61	127 76	90.74	15 60
		....do	... do		Toll		75								75
		....do	Army Point...	1,375	and 5 sp'ls		15 95					742.61	14 83	55.88	1 12
		.. do	Reno.....	558	and 1 sp'l		6 37						6 37		
							166 43	Sep. 1, '84	166 43				148 96		17 47
May and June, '84	....do	Tucson	San Francisco.	5,032			180 41					11.09	2 04	967.38	178 37
					Toll.....		20								20
							180 61						2 04		178 57
					Less value of 15 M collars, lost.		1 65						1 65		
							178 96	... do	178 96				39		178 57
July, '84	....do	San Francisco.	Bowie.....	1,251			35 87	... do	35 87			11.09	0 37	1,076.98	35 50
Do.....	.....	.. do	Tucson	26,276			294 73					11.09	3 34	961.38	291 39
					Toll.....		55								55
							295 28	... do	295 28				3 34		291 94
Do.....	... do	... do	Ogden.....	1,868			34 53					742.61	30 77	90.74	3 76
					Toll.....		50								50
		Army P't	... do	1,279		1 93.66	24 77			$5 00					
				1,279			1 12					742.61	19 43	55.88	1 46
							60 92	... do	60 92	5 00			50 20		5 72
Do.....	....do	San Francisco	Bowie.....	152,630			1,203 53					11.09	12 27	1,076.98	1,191 26
					Toll.....		2 80								2 80
					Loading.		4 06								4 06
		Deming	....do	71,458			482 49								482 49
							1,692 88	....do	1,692 88				12 27		1,680 61
May and June, '84..	....do	Bowie.....	El Paso	199			2 97								
		Deming.....	Tucson.....	6,745			85 34								
							88 31	....do	88 31						88 31

* Withheld under cir ular letter of the Secretary of the Treasury of January 12, 1884.

EXHIBIT D.—*Audited accounts for transportation service mentioned in Art. 10 of petition*—Continued.

Date of service.	For what office or department.	From—	To—	No. of passengers or pounds freight.	Miscellaneous.	Rate.	Amount.	Date.	Amount.	Diff's.	Allowed.			
											Miles.	Aided.	Miles.	Non-aided.
				Freight.										
July, '84	Q. M. D	Ogden	San Francisco	23,529			$592 54				742.61	$528 02	90.74	$64 52
					Toll		60							60
							593 14	Sep. 1, '84	$593 14			528 02		65 12
Do	do	San Francisco	Needles	29,766			239 84				11.09	4 28	611.08	235 56
					Toll		90							90
							240 74	do	240 74			4 28		236 46
Do	do	do	Benson	100,910			1,961 15				11.09	21 23	1,013.38	1,939 92
					Toll		2 50							2 50
					Loading		9 99							9 90
							1,973 64	do	1,973 64			21 23		1,952 41
Do	do	Deming	Tucson	710			11 50							
		do	Benson	39,055			497 83							
		El Paso	do	547			10 56							
		San Simon	do	3,497			20 65							
							540 54	do	540 54					540 54
May, '84	do	Ogden	San Francisco	65,101			1,114 40				742 61	993 06	90.74	121 34
					Toll		1 65							1 65
							1,116 05	do	1,116 05			993 06		122 99
July, '84	Sig. Corps	El Paso	Wilcox	82,915				Sep. 1, '84	778 84					778 84
Do	Q. M. D	San Francisco	Needles	66,678			989 23				11.09	17 63	611.08	971 60
					Toll		1 65							1 65
					Loading		2 56							2 56
		do	Maricopa	3,592			116 17				11.09	1 45	875 91	114 72
					Toll		70							70
		do	Tucson	22,122			639 64				11.09	7 25	967.38	632 39
					Toll		60							60
		do	Benson	7,063			232 24				11.09	2 51	1,013.38	229 73
					Toll		15							15

		....do	Bowie.....	71,694	.....	.....	2,077 86	.....	.....	.....	11.09	21 18	1,076.98	2,056 68
					Toll.....	.....	1 85	.....	.....	.....	.....	.....	.....	1 85
					Loading.....	.....	1 25	.....	.....	.....	.....	.....	.....	1 25
		Army Point...	Needles.....	15,092	and 3 sp'ls	.....	262 04	.....	.....	.....	11.09	4 90	581.46	257 14
		....do	Tucson	6,418	.....	.....	118 22	.....	.....	.....	11.09	1 38	937.46	116 84
		....do	Benson	5,956	and 1 sp'l.....	.....	112 11	.....	.....	.....	11.09	1 25	983.76	110 86
		do	Wilcox	1,740	.....	.....	33 10	.....	.....	.....	11.09	35	1,023.66	32 75
		....do	Bowie	6,928	.....	.....	134 77	.....	.....	.....	11.09	1 41	1,047.36	133 36
		Needles.....	Benicia	2,298	.....	.....	31 02	.....	.....	.....	11.09	58	579.85	30 44
		do	Los Angeles ..	100	.....	.....	1 76	.....	.....	.....	.....	.....	.....	1 76
		Los Angeles ..	Benson	4,895	.....	.....	119 93	.....	.....	.....	.....	.....	.....	119 93
		....do	Wilcox	12,571	.....	.....	308 59	.....	.....	.....	.....	.....	.....	308 59
		.. do	Bowie.....	1,410	.....	.....	34 55	.....	.....	.....	.....	.....	.....	34 55
		Pomona.....	Benson	96,719	.....	.....	660 11	.....	.....	.....	.....	.....	.....	660 11
		Puente	do	102,871	.....	.....	702 09	.....	.....	.....	.....	.....	.....	702 09
		... do	Bowie.....	49,416	.....	.....	345 91	.....	.....	.....	.....	.....	.....	345 91
							6,928 10	.....	.....	.....	.....	59 89	.....	6,868 21
					Less value 1 sack beans and 1 sack spuds lost.	.....	4 30	.....	.....	.....	.....	4 30	.....	
							6,923 80	Sep. 1, '84	6,923 80	.....	.....	55 59	.....	6,868 21
July, '84	....do	Ogden	San Francisco.	52,034	.....	.....	2,641 48	.....	.....	$0 02	742.61	2,353 84	90.74	287 62
					Toll.....	.....	1 45	.....	.....	.....	.....	.....	.....	1 45
		....do	....do	5,056	3 times, ac. sp'l train.	$2 12	356 79	.....	.....	3 93	742.61	314 43	90.74	38 43
				670	.....	1.75 7/10								
					Toll.....	.....	15	.....	.....	.....	.....	.....	.....	15
		....do	Junction	24,750	.....	.....	673 76	.....	.....	.....	.....	673 76	.....	
							3,673 63	....do	3,673 63	3 95	.....	3,342 03	.....	327 65
Do.....	.....	San Francisco.	Army Point...	21,193	and 5 sp'ls	.....	21 89	.....	.....	.....	.....	.....	.....	21 89
					Toll.....	.....	1 50	.....	.....	.....	.....	.....	.....	1 50
		....do	Reno.....	2,881	.....	.....	38 77	.....	.....	.....	154.47	24 52	89.79	14 25
					Toll.....	.....	20	.....	.....	.....	.....	.....	.....	20
		....do	Winnemucca..	11,073	.....	.....	215 19	.....	.....	.....	324.26	168 52	89.79	46 67
					Toll.....	.....	40	.....	.....	.....	.....	.....	.....	40
		....do	Halleck	10,146	.....	.....	274 30	.....	.....	.....	491.45	231 93	89.79	42 37
					Toll.....	.....	70	.....	.....	.....	.....	.....	.....	70
		Roseville.....	San Francisco.	1,976	.....	.....	5 14	.....	.....	.....	18.24	87	89.79	4 27
					Toll.....	.....	10	.....	.....	.....	.....	.....	.....	10
		Army Point...	Reno.....	23	.....	.....	31	.....	.....	.....	154.47	23	54.93	08
		Winnemucca.	Ogden	1,320	.....	.....	41 65	.....	.....	.....	.....	41 65	.....	
		Oakland Pier..	San Francisco	.....	Guns, wagons, horses, &c.	.....	16 00	.....	.....	.....	.....	.....	.....	16 00
							616 15	....do	616 15	.....	.....	467 72	.....	148 43

EXHIBIT D.—*Audited accounts for transportation service mentioned in Art. 10 of petition*—Continued.

Date of service.	For what office or department.	From—	To—	No. of passengers or po'nds freight.	Miscellaneous.	Rate.	Amount.	Date.	Amount.	Diff's.	Allowed.			
											Miles.	Aided.	Miles.	Non-aided.
				Freight.										
July, '84	Q. M. D.	San Francisco.	El Paso	154,520			1,112 54				11.09	$9 60	1,274.61	$1,102 94
					Toll		3 95							3 95
							1,116 49	Sept. 1, '84	$1,116 49			9 60		1,106 89
Nov., '83, & June, '84	Sig. Ser	Maricopa	Willcox	112			1 49							
		Deming	Maricopa	540			8 69							
							10 18	do	10 18					10 18
July, '84	Q. M. D.	Maricopa	Tucson	810	and 1 sp'l		5 35							
		do	Benson		1 sp'l		25							
		do	Bowie	2,943			33 99							
		do	Deming	382			8 75							
		Tucson	Benson	161			56							
		do	Bowie	2,154			16 44							
		Benson	do	26,997			87 63							
		Bowie	Willcox		1 sp'l		25							
		Deming	Tucson	3,288			44 58							
		do	Benson	3,990			45 09							
		do	Bowie	5,575			44 15							
		do	El Paso	1,380			9 25							
		El Paso	Tucson	154			2 48							
		do	Benson	8,913			143 19							
		do	Bowie	7,290			91 13							
							538 09	do	538 09					538 09
June, '84	do	Junction	Reno	1,050				do	10 71			10 71		
July, '84	Q. M. D.	San Francisco	Benicia	1,598	and 2 sp'ls			Sep. 1, '84	2 10					2 10
				Passengers.										
Do	Paymaster	do	Halleck	1			37 30				491.45	31 54	89.79	5 76
		Halleck	Winnemucca	1			12 50					12 50		
		Winnemucca	Reno	1			12 75					12 75		
							62 55	do	62 55			56 79		5 76

July and Aug, '84..	Sig. Corps.	Deming.....	Colton	1	.....	.....	51 00								
		....do	Yuma.....	1	.....	.....	45 90								
		do	Maricopa	1	.....	.....	31 00								
		Yuma.....	El Paso	1	.....	.....	53 00								
							180 90	....do	180 90	.....	.....	.....	.....	.....	180 90
July, '84	Sol's Home	San Francisco	Ogden	1	.....	.....	.....	.. do	41 03	.....	742. 61	36 56	90. 74		4 47
Do	Q. M. D ...	Bowie.....	Deming	3	.....	$10 90	.....	... do	32 70	.....	.....	.....	.....		32 70
July and Aug., '84.	....do	San Francisco.	Sacramento ...	3	.....	3 30	9 90	.....	.....	.....	19. 97	1 92	83. 25		9 90
		....do	Stockton	3	.....	3 30	9-90	.....	.....	.....	11. 09	1 13	103. 75		7 98
		.. do	Modesto	3	.....	3 90	11 70	.....	.....	.....	11. 09	2 00	471. 18		10 57
		... do	Los Angeles ..	4	.....	21 70	86 80	.....	.....	.....					84 80
		Halleck	Elko	2	.....	1 75	3 50	.....	.....	.....		3 50			
							121 80	....do	121 80	....	.....	8 55	.....		113 25
July, '84	... do	Deming	Maricopa	12	.....	31 00	372 00								
		.. do	Tucson	7	.....	21 90	153 30								
					200 bag'e	.....	4 40								
		... do	Benson.....	1	.....	.....	17 30								
							547 00	....do	547 00	.....	.....	.....	.....		547 00
Do	....do	Ogden	San Francisco.	127	.....	48 00	6, 096 00	.....	.....	.....	742. 61	5, 432 23	90. 74		662 77
		.. do	Junction	39	.....	48 00	1, 872 00	.....	.....	.....	.....	1, 872 00			
							7, 968 00	....do	7, 968 00	.....	.....	7, 304 23	.....		663 77
July and Aug., '84.	....do	San Francisco.	Benicia	2	.....	1 00	2 00	.....	.....	.....	.....	.....	.....		2 00
		... do	Junction	1	.....	.....	3 80	.....	.....	.....	18. 24	64	89. 79		3 16
		....do	Reno	22	.....	12 05	265 10	.....	.....	.....	154. 47	167 65	89. 79		97 45
		....do	Winnemucca..	2	.....	24 80	49 60	.....	.....	.....	324. 26	38 84	89. 79		10 76
		do	Halleck	3	.....	37 30	111 90	.....	.....	.....	491. 45	94 61	89. 79		17 29
		... do	Willcox	23	.....	60 00	1, 380 00	.....	.....	.....	11. 09	14 38	1, 053. 28		1, 365 62
		....do	Bowie	3	.....	60 00	180 00	.....	.....	.....	11. 09	1 83	1, 076. 98		178 17
		Oakland Pier..	San Francisco.	63	.....	15	9 45	.....	.....	.....	.....	.....	.....		9 45
		Army Point...	....do	11	.....	1 00	11 00	.....	.....	.....	.....	.....	.....		11 00
		Ogden	.. do	1	.....	.....	43 70								
		.... do	....do	1	.....	.....	40 94	.....	.....	.....	742. 61	75 42	90. 74		9 22
		Mojave	....do	1	.....	.....	16 00	.....	.....	.....	11. 09	46	370. 68		15 54
		Needles	...do	14	.....	30 45	426 30	.....	.....	.....	11. 09	7 60	611. 08		418 70
		Tucson	....do	3	.....	55 00	165 00	.....	.....	.....	11 09	1 87	967. 38		163 13
		Benson	....do	5	.....	58 00	290 00	.....	.....	.....	11. 09	3 14	1, 013. 38		286 80
		Deming	..... do	4	.....	60 00	240 00	.....	.....	.....	11. 09	2 22	1, 186. 41		237 78
		Ogden	Reno	17	.....	40 13	682 21	.....	.....	.....	.....	682 21			
		....do	Halleck	2	.....	18 75	37 50	.....	.....	.....	.....	37 50			
		Winnemucca..	Army Point...	1	.....	.....	24 10	.....	.....	.....	324. 26	20 61	54. 93		3 49
		San Pedro	Willcox	2	.....	47 05	94 10	.....	.....	.....	.....	.....	.....		94 10
		Maricopa	.. do	20	.....	17 70	354 00	.....	.....	.....	.....	.....	.....		354 00

EXHIBIT D.—*Audited accounts for transportation service mentioned in Art. 10 of petition*—Continued.

Date of service.	For what office or department.	From—	To—	No. of passengers or po'nds freight.	Miscellaneous.	Rate.	Amount.	Date.	Amount.	Diff's.	Allowed.			
											Miles.	Aided.	Miles.	Non-aided.
				Passengers.										
July and Aug. '84	Q. M. D ..	Maricopa	Bowie	13	.....	$20 10	$261 30	.....	.....	.....	.....	.....	.....	$261 30
		Tucson	Maricopa	17	.....	9 10	154 70	.....	.....	.....	.....	.....	.....	154 70
		....do	Willcox	8	.....	8 60	68 80	.....	.....	.....	.....	.....	.....	68 80
		....do	....do	.....	50 bag'e	.....	50	.....	.....	.....	.....	.....	.....	50
		... do	Bowie.....	11	.....	11 00	121 00	.....	.....	.....	.....	.....	.....	121 00
		Benson.....	Maricopa	2	.....	13 70	27 40	.....	.....	.....	.....	.....	.....	27 40
		....do	Tucson	6	.....	4 60	27 60	.....	.....	.....	.....	.....	.....	27 60
		Bowie.....	Los Angeles...	2	.....	48 85	97 70	.....	.....	.....	.....	.....	.....	97 70
		....do	Benson.....	51	.....	6 40	326 40	.....	.....	.....	.....	.....	.....	326 40
		... do	Willcox.....	17	.....	2 40	40 80	.....	.....	.....	.....	.....	.....	40 80
		....do	El Paso	2	.....	18 05	36 10	.....	.....	.....	.....	.....	.....	36 10
		Deming	Maricopa	3	.....	31 00	93 00	.....	.....	.....	.....	.....	.....	93 00
		....do	Tucson	11	.....	21 90	240 90	.....	.....	.....	.....	.....	.....	240 90
		... do	Benson.....	5	.....	17 30	86 50	.....	.....	.....	.....	.....	.....	86 50
		....do	Willcox.....	14	.....	13 30	186 20	.....	.....	.....	.....	.....	.....	186 20
		....do	Bowie.....	55	.....	10 90	599 50	.....	.....	.....	.....	.....	.....	599 50
		....do	El Paso	12	.....	7 15	85 80	.....	.....	.....	.....	.....	.....	85 80
		El Paso	Benson.....	1	.....	.....	24 45	.....	.....	.....	.....	.....	.....	24 45
							6, 905 35	Sept. 1, '84	$6,905 35	.....	.....	$1,148 98	.....	5, 756 37
									36,512 08	$8 95	.....	14,202 88	.....	22, 300 25
									*22,300 25	.....	.....	.....	.....	22, 300 25
3rd Aud'r, sett. 6,574, War war'nt, 3693, June 26, '85, int. $7,101.44, s.f. $7,101.44, 2d Comp'rs cert, May 20, '85								.....	14,211 83	8 95	.....	14,202 88	.....	.. ..

* Withheld under circular letter of the Secretary of the Treasury of January 12, 1884.

RECAPITULATION.

For what office or department.	Amount.	Differences.	Allowed.	
			Aided.	Non-aided.
G. L. O	$141 05	....	$27 41	$113 64
Geological	54 53	....	36 56	17 97
Do	62 24	....	40 28	21 96
Q. M. D.....	36, 512 08	$8 95	14, 202 88	22, 300 25
	36, 769 90	8 95	14, 307 13	22, 453 82

10½ In the Court of Claims of the United States.

II.—*Demurrer.*—*Filed Dec.* 16, 1885.

THE CENTRAL PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 14711.

And now come the said defendants, by their Attorney-General, and demurring to the petition in this cause, state as the ground thereof that the petition does not allege facts sufficient to constitute a cause of action.

ROBERT A. HOWARD,
Assistant Attorney-General.

11 III.—*Demurrer overruled.*

At a Court of Claims, held at the city of Washington on the 1st day of March, A. D. 1886.

The chief justice read the opinion of the court, and it was ordered that the demurrer of the defendants heretofore filed be overruled.

BY THE COURT.

12 IV.—*Opinion on demurrer.*—*Filed M'ch* 1, 1886.

RICHARDSON, *Ch. J.*, delivered the opinion of the court:

The claimant is a corporation organized under the laws of California. By authority of the laws of that State it owned and operated during the period covered by the petition 383.67 miles of road which formerly belonged to the following companies, also organized under the statutes of California, all of which have been consolidated and form the present corporation under the laws of said State:

	Miles.
1. California and Oregon Railroad Company	190.08
2. Western Pacific Railroad Company (non-aided part)	24.31
3. San Joaquin Valley Railroad Company	146.08
4. San Francisco, Oakland and Alameda Railroad Company	23.20
	383.67

During said period the claimant corporation also controlled and operated, by lease, under the laws of said State, 1,791.35 miles of railroad which formerly belonged to State and Territorial corporations as follows:

	Miles.
1. Sacramento and Placerville Railroad Company	5.64
2. Stockton and Copperopolis Railroad Company	49.00
3. Northern Railway Company (including San Pablo and Tulare Railroad Company)	200.14
4. California Pacific Railroad Company	115.44
5. Southern Pacific Railroad Company of California (including Los Angeles and Wilmington and Mojave to Needles)	790.38

	Miles.
6. Los Angeles and San Diego Railroad Company.	27. 60
7. Amador Branch Railroad Company.....	27. 05
8. Berkeley Branch Railroad Company.	3. 83
9. Los Angeles and Independence Railroad Company.....	16. 83
10. Western Development Company.....	. 13
11. Southern Pacific Railroad Company of Arizona	383. 31
12. Southern Pacific Railroad Company of New Mexico.....	168. 26
13. Pacific Improvement Company.....	. 23
14. Galveston, Harrisburg and San Antonio Railroad Company	3. 61
	1, 791. 35

No aid in bonds as hereinafter mentioned has been given by the Government to said company or companies as to any portion of said owned and leased 2,178.02 miles of road.

The company also owned and operated about 865.66 miles of railroad constructed by the aid of the United States under the provisions of the acts of Congress of July 1, 1862 (12 Stat. L., 489), and January 2, 1864 (13 Stat. L., 356), and is indebted to the Government for interest paid on account of bonds issued in its behalf, and is under obligation to pay said bonds and interest at maturity.

13

Thus, while the company owned and operated about 865.66 miles of road aided by Government, the greater part of its road, to the extent of 2,175.02 miles, controlled by lease and otherwise, has no connection with the Government by aid or by corporate rights under those acts.

This action is brought to recover compensation for services performed for the United States in transportation over those portions of its railroad above mentioned, in the building of which it has not been aided by the Government.

The defendants file a general demurrer.

The defense relied upon is that the whole of said compensation is required to be retained under the provisions of the second section of the act of May 7, 1878, chap. 96, commonly called the Thurman act (1 Sup. R. S., 320).

The issue thus raised makes it necessary to give a careful consideration to all the legislation of Congress and the decisions of the Supreme Court in relation to this company and other companies similarly situated. The history of the building of those roads and the general policy of the Government in relation to them has been fully reviewed in former cases and need not be repeated here. (United States v. Union Pacific Railroad Company, 91 U. S., 72; Same v. Same, 99 U. S., 402; United States v. Central Pacific Railroad Company, 99 U. S., 449; United States v. Kansas Pacific Railroad Company, 99 U. S., 455; United States v. Denver Pacific Railway Company, 99 U. S., 460; The Sinking Fund Cases, 99 U. S., 700.) We shall confine our consideration to those portions only which throw light on the present controversy.

By the acts of 1862 and 1864 the company was granted the right of way to build its road over the public domain, and did so build it to the extent of about 865.66 miles. In this it was aided by the Government by

the issue to it of certain bonds of the United States. For the security and payment of these bonds the following provisions were made by the act of 1862 (12 Stat. L., 493):

"SEC. 6. The grants aforesaid are made upon condition that said company shall pay said bonds at maturity; * * *

"And all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par;

"And after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof."

And by the act of July 2, 1864 (13 Stat. L., 356):

"SEC. 5. * * * Only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said road."

It is held by the Supreme Court that those acts accepted by the railroad companies therein named, of which the claimant is one, constitute a contract between the parties which cannot be impaired by the United States without compensation established by due process of law (United States v. Union Pacific Railroad Company, 91 U. S., 72; The Sinking Fund Cases, 99 U. S., 718).

14 The question, then, first to be determined, is, what was the contract of these statutes as to the payment of compensation which might become due the company for services rendered to the Government?

The decisions of the Supreme Court, taken together, must be considered as having settled that question.

The act of 1862 provides that "after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of the road shall annually be applied to the payment thereof."

The Kansas Pacific Railway Company was one of the roads aided under these acts. The aid extended to the building of $393\frac{5}{16}$ miles of road, for which bonds of the United States were issued by the Government as therein provided. But the company built $245\frac{1}{16}$ of additional miles of road on account of which it received no such aid.

An action was brought by the United States against the company to recover 5 per cent. of its net earnings to be applied to the payment of said bonds and interest. The right of the Government to recover 5 per cent. of the net earnings of the unaided part of the company's road was the main point in controversy. The Supreme Court, reversing the decision of the circuit court, held that the net earnings mentioned in the acts of Congress were those only of the aided portion of the road. (United States v. Kansas Pacific Railway Company, 99 U. S., 455.)

In the opinion, delivered by Mr. Justice Bradley, the court say:

"A material question in this case is, whether the whole line to Denver or only the line which this company was authorized to construct * * * is liable to the lien of the Government subsidy, and the payment of 5 per cent. net earnings. * * * If only the latter, the net earnings liable

to the claim of 5 per cent. would be only those produced on the first 393$\frac{5}{16}$ miles, or if these cannot be ascertained, then a pro rata amount of the whole net earnings of the road.

"From a careful examination of the statutes relating to this subject, we are of opinion that, whilst, as to its entire line, the company, in the words of the ninth section of the act of 1864, is 'entitled to all the benefits and subject to all the conditions and restrictions of the act,' and is bound to furnish transportation and telegraphic accommodations to the Government on the usual terms; yet that the subsidy bonds granted to the company, being granted only in respect of the original road, terminating at the one hundredth meridian, are a lien on that portion only; and that the 5 per cent. of the net earnings is only demandable on the net earnings of said portion.

"This deduction, we think, is clearly demonstrated by the words of the fifth section of the act of 1862, which creates the Government lien for the payment of the subsidy bonds.

"Those words are that 'the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.'

"It is the road and appurtenances, in consideration of which, or in respect of which, the bonds are issued, that is subjected to the lien.

"This can apply, in the present case, only to the first 394 miles of the defendants' road. And as the lien only applies to this portion, the stipulation for payment out of net earnings cannot reasonably be applied to any other portion of the line."

This decision conclusively settles the question as to net earnings, and defines the statute contract to be to pay over 5 per cent. of those which arise from the aided roads, or aided portion of a company's road, without including the earnings of the non-aided parts.

The provision for the application of all compensation for services rendered to the Government is in the same section of the act of 1862, and in the same connection as that of the 5 per cent. net earnings, and is in substantially the same language. If the latter does not apply to the non-aided portions of the roads, as the Supreme Court holds, we are unable to see how the former can be construed so to apply. In both matters alike
15 the statute was dealing only with the roads to be built with Government aid and not with any additional roads and business which the companies might undertake in the future.

In the case of the United States v. Denver Pacific Railway Company (99 U. S., 460), the Supreme Court apply the principles of the Kansas Pacific Railway decision to compensation for services as well as to net earnings. The road of the Denver company was part of that which the Kansas company was authorized by Congress to build over the public domain under the acts of 1862 and 1864, as to which the rights and privileges of the latter were transferred to the former company, "subject to all the obligations pertaining to said part of its line" (act of March 3, 1869, ch. 127, 15 Stat. L., 324), but it was from that part of the Kansas company's line the building of which the Government did not aid by the issue of bonds. The action by the company was for compensation for services

and the Government filed a counter-claim for 5 per cent. of the net earnings. The court said, "the decision in this case is controlled by United States vs. Kansas Pacific Railway Company" (99 U. S., 455); and they held that the United States was neither entitled to recover 5 per cent. of its net earnings nor to retain any part of what was due to it from the Government as compensation for services.

This court so understood the effect of the decisions of the Supreme Court when it had before it the cases of Union Pacific Railway and the Central Branch Union Pacific Railroad Company (16 C. Cls., 353), and so held. From the decision of the court in those cases no appeal was taken and the ruling was acquiesced in.

So, again, in the Union Pacific Railway Case (20 C. Cls., 102) we said in reference to those provisions of the subsidy acts: "These provisions apply not only to the Union Pacific Division, but also to the $393\frac{5}{16}$ miles of the Kansas Pacific Division which were aided by the Government. They do not apply to the other $245\frac{1}{16}$ miles of said road, nor to the Denver Pacific Division," which were not aided under those acts, although both were operated by the Union Pacific Railway Company. The point now in issue was not argued or raised in the latter case, the only matter in controversy in regard to that branch of the case being as to what proportion of the net earnings of the whole line of the road should be paid on account of the aided portion. It seemed to be conceded that the subsidy acts did not apply to the non-aided portion of the road. On appeal no exception was taken to the action of this court in that particular.

On the part of the defendants it is now claimed that they are required by section 2 of the act of 1878 (1 Sup. R. S., 320) to retain the whole amount of compensation due from them to the claimant for services rendered the Government by said company over all its roads and branches, including those parts which have never received any aid from the United States under the acts of 1862 and 1864, and which are chartered, run, and operated under the laws of the State of California or other local laws.

In the Sinking Fund Cases (99 U. S., 718) the Supreme Court held that "the United States cannot, any more than a State, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligations of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law."

16 The opinion in that case proceeds upon the ground that while Congress might so regulate the affairs of the aided companies within the scope of the contract acts of 1862 and 1864 as to require a sinking fund for the payment of the subsidy bonds to be established from their earnings, any requirement materially altering the contract would be held unconstitutional and of no effect.

The Chief Justice says, in the same opinion:

"The contract of the company in respect to the subsidy is to pay both principal and interest when the principal matures, unless the debt is sooner discharged by the application of one-half the compensation for transportation and other service rendered for the Government, and the 5 per cent. of net earnings as specified in the charter."

We have already seen that the court decided in the Kansas Pacific Rail-

road case (99 U. S., 457), that the 5 per cent. of net earnings, according to the charter, was to be paid only out of the net earnings of the aided part of the companies' roads, and that the same construction applies with like force to the earnings of the companies for services to the Government. The earnings, therefore, of the non-subsidized parts are held by the Supreme Court to be outside of the contract. To require the companies then, to pay into the sinking fund money earned by them in other business or on other roads chartered by State authority and not aided by the National Government, would seem to be a material alteration of the contract, which Congrees could not make without the consent of the other contracting parties, if it so intended, which is not to be presumed.

A rule of interpretation for such a case is presented by Judge Story, when, speaking for the Supreme Court, in United States v. Coombs (12 Peters, 75), he says, in reference to a section of an act of Congress then under consideration:

"If the section admits of two interpretations, one of which brings it within and the other presses it beyond the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presumption never ought to be indulged that Congress meant to exercise or usurp any unconstitutional authority, unless that conclusion is forced upon the court by language altogether unambiguous."

The second section of the act of 1878 (the Thurman act) is as follows:

"SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned."

Taken wholly by itself the language of this section is broad enough to sustain the position urged on behalf of the defendants. But that is a narrow and superficial view, not to be adopted if the words can be otherwise so interpreted as not to conflict with contract relations and constitutional limitations. The act was passed "to alter and amend the act of 1862 and the act of 1864." Section 13 expressly enacts "that each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of 1862, and of 1864, respectively, and both of said acts." It must, therefore, be taken, read, and construed with reference to the pre-existing acts, and in the light of the judicial decisions thereon. "The correct rule of interpretation," says the Supreme Court in United States v. Freeman (3 Howard, 564), "is that if divers statutes relate to the same thing
17 they ought to be all taken into consideration in construing any one of them, and it is an established rule of law that all acts in pari materia are to be taken together as if they were one law.

The only subject-matter of the contract acts of 1862 and 1864 was the building of roads to be aided by the United States, and the language of the act of 1878 must be held to be confined to the same subject-matter. It is not an unreasonable construction, therefore, to hold, in view of the decision of the Supreme Court, that the words of the second section of the

act of 1878, "The whole amount of compensation which may from time to time be due to said several railroad companies respectively for services rendered for the Government," were intended to apply only to the same services mentioned in the former acts, and were not used for the purpose of introducing a new and additional service not contemplated by those acts. That is, the word "whole," like the word "all" in the act of 1862, and the words "one-half" in the act of 1864 may be held to qualify "compensation" and not "services." Thus read, the word "services" would be interpreted alike in all these acts as applicable only to services on the aided portions of the roads.

Had Congress intended by the act of 1878 to apply its provisions to services not included in the former acts and beyond the terms of the contract, it must be presumed that so great and so important a change would have been more explicitly set out.

This interpretation is in harmony with the rules of construction of statutes and the decisions of the Supreme Court, and brings the terms of the act within the limitations of the Constitution.

The result is, that the demurrer is overruled, and judgment will be entered for the claimants unless the defendants elect to plead to the petition.

Nott, J., did not sit in this case, and took no part in the decision.

18 V.—*Final judgment.*

At a Court of Claims held in the city of Washington on the 8th day of March, A. D. 1886, judgment was ordered to be entered up as follows:

The demurrer of the defendants to the claimant's petition having been overruled on the 1st inst., and the defendants declining to plead further, it is ordered, on motion of Thomas Simons, esq., for the claimant, that judgment be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said The Central Pacific Railroad Company, do have and recover of and from the United States the sum of twenty-two thousand four hundred and fifty-three $\frac{83}{100}$ dollars. ($22,453.83.)

BY THE COURT.

19 VI.—*Application for and allowance of appeal—.Filed March* 8, 1886.

From the judgment rendered in the above-entitled cause on the 8th day of March, 1886, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of March, 1886, make application for, and give notice of an appeal to, the Supreme Court of the United States.

R. A. HOWARD,
Assistant Attorney-General.

And now, to wit, March 8, 1886, it is ordered that the appeal be allowed as prayed for.

WILLIAM A. RICHARDSON,
Chief Justice.

20 In the Court of Claims.

THE CENTRAL PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 14711.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the aforesaid cause, of the order of court overruling demurrer, of the opinion of the court on demurrer, of the judgment of the court, of the application of defendants for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court of Claims at Washington City this 13th day of March, 1886.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1291. The United States, appellant, vs. The Central Pacific Railroad Company. Court of Claims. Filed March 15, 1886.

118-235-

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, Appellant,
ag't
THE CENTRAL PACIFIC RAILROAD COMPANY.

1291

The appellee moves the court, that the above-entitled cause be advanced on the docket, and an early day set for the argument and the determination thereof for the followiug reasons:

The appellee brought the suit in the Court of Claims for compensation for services rendered to the United States by it upon certain parts of the railroad lines, owned or controlled by it, in pursuance of an argreement with the Secretary of the Treasury, to obtain a determination in this court as soon as possible of the following matter in controversy.

Accounts of the company for service, (rendered during the period since June, 1880 on about 2100 miles of road, operated by it, as to which it has never received aid in bonds under the acts of 1862 and 1864; 12 St., 489; 13 St., 356), amounting at the date of suit to upwards of $900,000, and which have since accumulated at the rate of about $35,000 per month, are suspended in the hands of the accounting officers of the government, because the Secretary of the Treasury holds that the amounts found due thereon are not payable to the company, but are required, by section 5260 of the Revised Statutes to be withheld, and by the second section of the act of May 7, 1878, (20 St., 56), to be retained and applied as therein directed.

If the Secretary is right, it is of great importance to the company, as well as to the government and its other creditors, that the amount belonging to the sinking fund should be invested therein, as soon as possible, so as to become producitve.

If the Secretary is not right, the company ought to have been promptly paid when the accounts were rendered, and should not be longer subjected to the hardship of having its compensation withheld for services extending over a period of six years.

The attention of the court is respectfully directed to the provisions of section 5201 of the Revised Statutes, as applicable to the suit of the company, and as further justifying this motion.

McDONALD, SIMONS & BRIGHT,
Attorneys for Appellee.

118-235

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANT,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, appellee. } No. 1291.

APPEAL FROM THE COURT OF CLAIMS.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANT,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, appellee. } No. 1291.

APPEAL FROM THE COURT OF CLAIMS.

Comes A. H. Garland, Attorney-General of the United States, and presents here to the court a copy of a letter from the Secretary of the Treasury (the original being on file in the Department of Justice), showing the importance of an early decision of the above-entitled cause; and believing it to be to the interest of the Government to have such cause disposed of as soon as possible, he moves the court to advance the cause on the docket, that the same may be as speedily heard as the rules of the court will permit.

Respectfully submitted.

A. H. GARLAND,
Attorney-General of the United States.

12457

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 12, 1886.

SIR: In the case of the Central Pacific Railroad Company against the United States, recently decided in the Court of Claims, and in which I am informed an appeal has been taken to the Supreme Court of the United States, I invite your attention to the desirability of a speedy termination of the questions involved in the case in the appellate court.

Because of the pendency of this action the settlement of very many accounts, involving large sums of money, have been delayed in the Treasury Department, and the number is constantly accumulating. If, under the rules and practice of the court and the statutes giving cases of this character a preference, the cause can be advanced upon the calendar and disposed of at an early day, I would suggest that action be taken by the Department of Justice to secure such a result.

Very respectfully,

D. MANNING,
Secretary.

118-235

APR 28 1886
JAMES H. MCKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANTS,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY.
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Secretary.

118-235

FILED
APR 24 1886
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THE CENTRAL PACIFIC RAILROAD Company.
No. 1291.

APPEAL FROM THE COURT OF CLAIMS.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANTS,
vs.
THE CENTRAL PACIFIC RAILROAD Company.
No. 1291.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

On November 24, 1885, the Central Pacific Railroad Company filed its petition in the Court of Claims against the United States to recover compensation for services performed for the United States in transportation over those portions of its railroad in the building of which it has not been aided by the Government. On December 16, 1885, the defendants demurred to the petition, upon the ground that it does not allege facts sufficient to constitute a cause of action. This demurrer was overruled by the court, and from the judgment overruling the same an appeal has been taken to this court.

ASSIGNMENT OF ERROR.

It is respectfully submitted that the Court of Claims erred in overruling the demurrer to the plaintiff's petition.

ARGUMENT.

The question in controversy is as to the proper construction of the act approved May 7, 1878, commonly called the "Thurman act," and especially the second section thereof.

The second section of said act provides:

> That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking-fund hereinafter provided, for the uses therein mentioned.

The title of said act reads as follows:

> An act to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

The last four paragraphs of the preamble to said act are as follows:

> Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United

States, of the said Central Pacific Railroad Company, amount in the aggregate to more than $96,000,000, and those of the said Union Pacific Railroad Company to more than $88,000,000; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively, and of the disposition of their respective incomes, are not and cannot without further legislation be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of 1862, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of 1862 be altered and amended as hereinafter enacted; and

Whereas by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of 1864 for the amendment and alteration thereof ought also to be exercised as hereinafter enacted.

If there should be any doubt as to the intention of Congress in enacting this legislation, or if it should be contended that the language of the second section is susceptible of a broad or a narrow construction, resort may be properly had to the title and preamble. As to the title, the better opinion seems to be that it may be referred to in a doubtful case in aid of the inquiry into the legislative intent (Bishop on the Written laws, section 46).

As showing the inducements to the act, the preamble may have a decisive weight in a doubtful case. We look to this introductory matter for the general intent of the legislation, the reason and principles upon which the law

proceeds, so that to the extent these can influence the interpretation, the preamble becomes important (Bishop, sections 48 and 49. See also *United States* vs. *Union Pacific Railroad*, 91 U. S., p. 82).

Taking the title and preamble together, they show that the object of the act was to create in the Treasury of the United States a sinking fund for the purposes of paying, as far as it would suffice, the debts of the Union Pacific and Central Pacific Railroad Companies. It having been decided that the acts of 1862 and 1864 must be construed together, the subsequent act of 1878 must be interpreted with them. In the "sinking-fund cases" (99 U. S., 700), that part of the act of 1878 establishing a sinking fund in the Treasury was declared constitutional. The establishment of the fund being conceded, are the provisions as to what shall constitute the fund constitutional? The contention on the other side seems to be, first, that the act will bear the construction that the one-half compensation for services must be, and was intended to be, limited to the aided portions of the road, and, second, that if it is sought to extend the contribution to the sinking fund to the entire income of the company, it is in violation of the contract and a transgression of legislative power.

To the first we answer that, keeping in mind the title and preamble, if there is any ambiguity in the language of the statutes, there can be no doubt it was intended that the fund should be made from the entire income of the road irrespective of the source from whence derived. Section 1 is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the net earnings mentioned in said

act of 1862, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provisions shall be deemed and taken as an amendment of said act of 1864, as well as of said act of 1862. This section shall take effect on the 30th day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

Section 2 is as follows:

That the whole amount of compensation which may from time to time be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned.

Section 4 is as follows:

That there shall be carried to the credit of said fund, on the 1st day of February of each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said

Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $1,200,000, or so much thereof as shall be necessary to make the 5 percentum of the net earnings of its road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 percentum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding. That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $850,000, or so much thereof as shall be necessary to make the 5 percentum of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 percentum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided for the year ending on the 31st day of December next preceding.

Section 9 is as follows:

That all sums due to the United States from any of said companies respectively, whether payable pres-

ently or not, and all sums required to be paid to the United States, or into the Treasury, or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies, respectively or jointly, and also upon all the estates and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper, and lawful course of their current business, in good faith and for valuable consideration.

But we submit that there is no ambiguity in the second section. The chief justice of the Court of Claims in delivering his opinion admits that, taken wholly by itself, the language of this section is broad enough to sustain the position urged on behalf of the United States. There is no better rule by which to arrive at the meaning and intention of a law than to abide by the words which the lawmaker has used. Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction (*United States* vs. *Fisher*, 2 Cranch, 386). The words of a statute, if of common use, are to be taken in their natural, plain, obvious, and ordinary signification and import (1 Wheaton, 326). The current of authority

at the present day is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operations (20 Wendell, 561).

But it is claimed that if the construction for which we contend be correct, then the act is in violation of a contract; and that it has been decided in several cases by the Supreme Court and the Court of Claims that only so much of the company's road as was built with the aid of the bonds can be called upon to contribute.

To this we answer that the cases in the Supreme Court were decided before the passage of the "Thurman act," and in the case in 16 Court of Claims the exact question raised here does not seem to have been presented to the court. In the case 99 U. S., 700, the point at issue here was expressly reserved. If, then, a proper construction of all the acts of 1862, 1864, and 1878 permits, under the express reservation of the power to alter and amend, the rearrangement of the contract, it seems they could impose the obligation to secure the payment of the debt to the Government, both principal and interest, upon all the property and income of the road.

It is evident that the ability to purchase and lease other roads came from the standing given the original road by the several bounties of the Government. It is shown by their statements and accounts that much of the resources of the aided road were mingled with and contributed to the success and prosperity of the non-aided roads. Certainly the Government would have the right to follow the earnings of the original road into whosoever hands

they might be, and to subject the property in which these earnings had been invested to the contribution established by the act of 1878. (*National Bank* vs. *Insurance Company*, 104 U. S., 54; *United States* vs. *State Bank*, 96 U. S., 30; *Cook* vs. *Tullis*, 18 Wall., 332.)

In conclusion, I beg leave to invite the special attention of the court to the document hereto appended as affording valuable information and suggestions upon the question now under consideration.

Very respectfully,

JOHN GOODE,
Solicitor-General.

APPENDIX.

[Circular. Pacific Railroad earnings.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 11, 1885.

The following decision of the Second Comptroller of the Treasury in regard to compensation due the Central Pacific Railroad Company for services rendered for the Government, is published for the information and guidance of all concerned:

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., August 28, 1885.

In the matter of the motion of the Central Pacific Railroad Company, before the Secretary of the Treasury, for a revocation or modification of Department order or circular of January 12, 1884, with reference to the disposition to be made of the earnings of the compan, for Government transportation.

REPORT.

The Central Pacific Railroad Company was originally incorporated under the laws of the State of California, prior to July 1, 1862, but its corporate powers were enlarged by an act of Congress, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the

same for postal, military, and other purposes;" and further corporate rights and privileges were conferred upon it by an act of Congress, approved July 2, 1864, entitled "An act to amend the act of 1862."

The company accepted of all the conditions imposed and benefits conferred by these enactments, and is, therefore, to that extent to be regarded in the same light as if primarily incorporated by act of Congress.

By the provisions of these acts Government aid was extended to the company in the construction of its road to the extent of a free grant of a right of way through the public lands, together with ten alternate sections per mile on each side of the road on the line thereof, within the limits of 20 miles, and a loan of $16,000 per mile in Government bonds for each mile of the completed road, which, by the act of 1862, was made a first lien upon the property of the company; but by the act of 1864 the lien was postponed to that of a mortgage of an equal amount executed by the company.

By section 6 of the act of 1862, it was provided that the grants made to the company were upon the condition that the company should pay the bonds at maturity, and should at all times transmit dispatches over their telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon their railroad line for the Government whenever required to do so by any department thereof, and that the Government should have the preference in the use of the same for all purposes at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, and it also provided that "all compensation for services rendered for the Government shall be applied to the payment of the bonds and interest until the whole amount is fully paid."

Section 5 of the act of 1864 so far modified this provision as to require "that only one-half of the compensation for services rendered for the Government by said company

shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said road."

Section 6 of the act of 1862 also provided that after the road was completed, and until the Government bonds and interest were paid, "at least 5 per centum of the net earnings of said road shall also be annually applied to the payment thereof."

The road was completed to Ogden and a junction there effected with the Union Pacific road in or about the year 1869. The number of miles constructed by aid of land grants and Government loans was 864.

About the time of the completion of its road the company adopted the policy of leasing or constructing branch and parallel lines, in aid of some of which land grants were issued, pursuant to various acts of Congress, and this policy was carried out to such an extent that in 1884 the company operated about 2,800 miles, of which it owned in round numbers 1,250 miles and leased 1,550 miles. Of the 2,800 miles operated by the company, 1,600 miles were what were termed land-grant roads.

Very soon after the completion of its road, the question came before the accounting officers in the Treasury Department as to the basis upon which compensation for Government services was to be computed and retained for the payment of its bonds and interest, under the acts of 1862 and 1864; that is, whether one-half of the compensation earned by the company in the service of the Government upon its entire system of roads, including non-aided as well as aided lines, should be retained by the Secretary of the Treasury and applied in payment *pro tanto* of the interest falling due annually upon the bonds of the United States issued in aid of the company, or whether these earnings should not be apportioned *pro rata* between the bonded and the non-bonded portions of the company's roads, and only one-half of the amount earned

upon the bonded portion be retained for the purposes aforesaid.

It was then held by the accounting officers that one-half of the entire earnings of the company in the Government service, without reference to any discrimination between aided and non-aided lines, should be retained and applied as aforesaid.

This construction of the acts of 1862 and 1864 was acquiesced in by the company, and, so far as I can learn, no objection or protest was made or entered against this action of the accounting officers.

The entire Government loan being upwards of $27,000,000, and the interest upon it being over $1,600,000, the amounts to be applied under this construction of the law proved to be entirely inadequate to extinguish the interest annually falling due upon the bonds of the Government issued to the company; and in 1873 interest had accrued thereon, and remained unpaid, to the amount of several millions of dollars, which the revenues due to the company from the United States, under the acts of 1862 and 1864, were insufficient to liquidate. This evidently led to the passage of the act of 1873, the second section of which, subsequently incorporated in the Revised Statutes, section 5260, directed the Secretary of the Treasury to withhold all payments to any railroad company and its assigns on account of freights or transportation over their respective roads of any kind to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company and which shall not have been reimbursed, together with the 5 per centum of the net earnings due and not applied as provided by law. And a subsequent section provided that the company might bring suit in the Court of Claims to recover the price of such freight or transportation, and in such suit the right of the company to recover the same upon the law and the facts of the case should be determined and also the rights of the

United States upon the merits of all the points presented by it in answer thereto.

It was apparently the view of Congress that the unpaid accrued interest upon the Government subsidy bonds constituted a debt of the company to the United States, which was then due and payable, and which might be offset against the one-half of the earnings of the company for Government transportation, which the act of 1864 required to be paid to the company; and that by directing the Secretary of the Treasury to withhold payment and compelling the company to resort to the Court of Claims to recover the moneys due it, under the act of 1864, this set-off might be made available.

But the Supreme Court of the United States, in the case against the Union Pacific Railroad Company, decided in October, 1875 (91 U. S., 72), held that the company could not be required to pay the interest annually accruing upon its bonds until the maturity of the principal, which would not occur until 1897, and the object which the Federal legislature sought to accomplish by the passage of the act of 1873 was thereby frustrated.

Meanwhile the accrued interest upon these bonds was accumulating at a rapid rate, and in 1878 amounted to more than $13,500,000; and Congress again undertook to provide some security to the Government against future loss from this source, and on May 7, 1878, passed what is commonly known as the "Thurman act," and which, in brief, was entitled "An act to alter and amend the act of 1862, and also to alter and amend the act of 1864," the first section of which provided that the net earnings mentioned in the act of 1862 should be ascertained by deducting from the gross amount of the earnings of the company certain items of expenditure enumerated, and excluding certain other items named, and that this section should take effect June 30, 1878, and be applicable to all computations of net earnings thereafter.

The second section provided "that the whole amount of

compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned."

Section 3 established a sinking fund, and section 4 provided "that there shall be carried to the credit of said fund on the 1st day of February in each year the one-half of compensation for services hereinbefore named rendered for the Government by said Central Pacific Railroad Company not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day of each year, pay into the Treasury, to the credit of said sinking fund, the sum of $1,200,000, or so much thereof as may be necessary to make the 5 per centum of the net earnings of said road, payable to the United States under said act of 1862, and the whole sum earned by it, as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregrate to 25 per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding."

Subsequent sections of the act make provision for the final disposition of the sinking-fund and for its application eventually to the liquidation of the debts of the company, especially those which had priority over the lien of the bonds held by the United States. At the time of the passage of this act the company was operating as one system over 2,200 miles of road, being over 1,336 miles in excess of the 864 miles originally constructed by Government aid.

After the passage of the Thurman act, the accounting

officers adjusted the accounts of the Central Pacific Railroad Company for transportation services rendered by it over any and all portions of its various lines, without reference to the fact whether the same had been built by Government aid, and the whole amount of the earnings of the company for such transportation was covered into the Treasury and applied in the manner required by the provisions of that act. And this practice continued until May 24, 1883, when the then First Comptroller of the Treasury, upon appeal from the decision of the Sixth Auditor as to the right of the Utah and Northern Railway Company to payment for its services in carrying the mails of the United States, held that payment must in that instance be made by the Government to the railway company. The Utah and Northern Railway Company was neither owned nor leased by the Union Pacific Railroad Company, but, in the language of the decision (see 4 Lawrence, page 188), was "controlled" by that company.

While the First Comptroller discussed many questions which were not pertinent to the decision of the appeal then under consideration, and indicated his views thereon, yet, in a concluding paragraph of the opinion, he declares that "it is not intended to decide any question beyond that presented by the facts of this case."

This decision of the Comptroller seems to have been regarded by the then Secretary of the Treasury as deciding that the Government had no right, either under the act of 1873, or the Thurman act, or the supplementary act of March 3, 1879, to withhold payment from the Pacific Railroad Companies for transportation services performed for the Government, except over such portions thereof as had been built by the aid of Government bonds; and a circular order or letter to that effect was promulgated by the Treasury Department, June 27, 1883.

The Second Comptroller, however, who had the adjustment of the accounts of the War and Navy Departments,

and of the Indian service, took a different view of the question, and held that it was the duty of the Secretary to withhold payment of all moneys due these companies for Government transportation, and adjusted the accounts of the companies of which he had jurisdiction in accordance therewith.

The Secretary of the Treasury seems to have become dissatisfied with the circular letter of June 27, 1883, and on January 12, 1884, issued another letter upon the subject, which recites that it is deemed advisable to submit the question to Congress, and that thereafter all balances ascertained by the accounting officers to be due for these services should be certified, without suggestion as to the mode of payment, and thus reported to the Secretary subject to the future disposition of Congress. That body was then in session, but took no action in the premises, and again met and adjourned without providing any solution of the question.

Since January 12, 1884, these accounts have been adjusted and certified in accordance with the provisions of the circular of that date; and so far as they relate to the earnings of the Central Pacific Company upon the non-aided portions of its lines, the moneys earned in the Government service have neither been covered into the Treasury and applied as required by the provisions of the Thurman act, nor has the company been paid or received any credit for them whatever. This motion has therefore been made, in which the company seek, in effect, to have the order of January 12, 1884, revoked, and that of June 27, 1883, revived and enforced. The motion has a very wide scope, and its proper determination involves the true construction of those provisions of the Thurman act which require that all compensation due the company for services rendered the Government shall be retained by the Secretary of the Treasury and applied as therein directed.

It is insisted by the counsel for the company that this act

is in terms, or by necessary implication, limited in its operation in this respect to the earnings for Government transportation over those portions of the company's lines in aid of which subsidy bonds had been issued, and that both the Supreme Court of the United States and the Court of Claims have so held in repeated adjudications upon the subject. I am unable to assent to this proposition; but if the Federal judiciary have so decided, it should foreclose all discussion of the point by the executive branch of the Government. I have examined all of the authorities cited by counsel, and I do not find that in any of them was the precise question here presented considered or decided. The cases most confidently relied upon by the company are *The United States* v. *Kansas Pacific Railway Company* (99 U. S., 455; 12 C. Cls., 237); *Same* v. *Denver Pacific Railway Company* (99 U. S., 460; 13 C. Cls., 382.) But both of these cases arose before the passage of the Thurman act, and the construction of that act was not, and could not have been, the subject of judicial determination.

In the former case the principal question decided was, that the subsidy bonds issued by the Government were only a lien upon that portion of the road which had been built by the aid thereof; and in the latter case it turned out that the railroad company had not been the recipient of any subsidy bonds at all.

In the former case there was some discussion as to what constituted net earnings under the acts of 1862 and 1864, and the court reiterated the rule laid down by it in the case of *The Union Pacific Railroad Company* vs. *The United States* (99 U. S., 402); and while that case also arose before the Thurman act, it will be observed that the court, at page 419, when undertaking to define net earnings under the acts of 1862 and 1864, says, "These earnings, however, must be regarded as embracing all the earnings and income derived by the company from the railroad proper, and all the appendages and appurtenances thereof, including its ferry and bridge at Omaha, its cars, and all

its property and apparatus legitimately connected with its railroad." And in the Denver Pacific Railway case, the court, in a foot-note, says that the exemption of the road from all liability to have its compensation for Government transportation withheld is based upon the fact that the company was not indebted to the United States; and Attorney-General Devens, in an opinion dated June 18, 1880 (16 Opinions, 517), advised the retention of all compensation to the Central Pacific Company, upon all its lines and branches, until the question could be judicially determined, holding that it was not disposed of in either of the cases referred to.

But the Supreme Court, in later cases, known as the "sinking-fund cases" (99 U. S., 700), where the validity of the Thurman act was directly assailed, explicitly declared that the question was still an open one. They confirm the constitutionality of the Thurman act, and hold that the establishment of the sinking fund created by it is a reasonable regulation of the administration of the affairs of the companies, promotive alike of the interests of the public and of the corporators, and is warranted under the authority which Congress has, by way of amendment, to change or modify the rights, privileges, and immunities granted by it; and at page 731 the Chief Justice says, "It is not necessary now to inquire whether, in ascertaining the net earnings of the company for the purpose of fixing the amount of the annual contributions to the sinking fund, the earnings of all the roads owned by the present corporation are to be taken into account, or only of those in aid of which the land grants were made and the subsidy bonds issued. The question here is only as to the power of Congress to establish the fund at all. If disputes should ever arise as to the manner of stating the accounts, they can be settled at some future time."

It is not probable that such language would have been used at the very term at which the decisions in the Kansas Pacific and the Denver Pacific cases were handed down

if the court had regarded those decisions as settling the question of the extent to which the Government had the right to withhold compensation under the Thurman act.

The only remaining decision to which my attention has been called is that of the Pacific Railroad cases in 16 Court of Claims, 353. It was there held that the Thurman act did not extend to earnings by the Union Pacific Railway of the Kansas Pacific Company which had become consolidated with it on the 24th of January, 1880, and the decision was based upon the ground that the consolidation had taken place after the passage of the Thurman act, and that the Kansas Pacific was nowhere referred to in that act; and the court, at page 360, says, "We are therefore led to the conclusion that section 2 of the act of 1878 was intended to apply only to the Union Pacific and Central Pacific roads *as they then stood*, and to their respective liabilities to the Government based on the bonds issued to them, respectively, by the Government."

Under this ruling the Government would have the right to retain the earnings of the Central Pacific for transportation over those roads which comprised its lines on the 7th day of May, 1878, when the Thurman act was passed, which will be found to have included nearly 2,200 miles of its roadway.

If the language employed in the Thurman act is to be given its ordinary and obvious meaning, there would seem to be but little room for doubt that it was the intention of Congress that the United States should retain the whole amount of compensation which might, from time to time, be due to the company from the Government, and that no separation or appointment of its earnings between the aided and non-aided lines of the company was contemplated by the law-making power.

It would be difficult to employ words more pointed or explicit in this respect than those in which the second section of the act is expressed. And here it may be observed that it does not necessarily follow that, if the net earnings

referred to in the first and fourth sections of the act should be limited to the income of the company derived from the operation of the subsidized portion of its lines, the same limitation must be applied to the compensation to be retained under the second section.

Upon whatever basis the net earnings might be computed, and whether the compensation due the company from the United States exceeded the 25 per cent. of the net earnings provided for in section 4 or not, there were manifest reasons of propriety and sound public policy which required that the United States should be prohibited from making any money payments to the company on account of its Government service.

The company then owed the United States more than $13,500,000 of accrued interest, and without charging the company any interest upon the interest from the time when the Government was compelled to liquidate it, yet the interest was accruing annually upon the principal of the Government subsidy bonds at the rate of over $1,600,000.

It was not probable that the annual earnings of the company upon all its lines, of every character, in the Government service would ever equal this sum, to say nothing of the amount which must annually be reserved in order to extinguish the accrued interest upon the maturity of the bonds. This would require, in any view of the question, the reservation by the United States of the sum of $2,300,000 annually, but as matter of fact the total compensation due the company from the United States, in any one year, has not exceeded one-half of that sum.

Take, for example, the earnings of the company as shown by the Railroad Commissioner's report for the year which ended June 30, 1884, and we find that the charges of the company for Government transportation amounted to $918,478.26, which, if prorated over the aided and non-aided lines, gives $403,241.26 as the share of the former,

and $515,237 as that of the latter. The net earnings of the aided line were $2,646,122.76, 25 per cent. of which is $661,530.69.

If the position of the company is tenable, the United States could not retain more than this amount from the moneys due from the Government to the company, but would be compelled to pay to the company, in cash, $256,947.57, although there was still due the United States from the company, for interest which had accrued in that same year, the sum of $1,000,000, which was unprovided for.

It is not probable that Congress, which was charged with the duty of protecting the public funds from loss or waste, ever intended any such consequences to flow from an enactment the declared purpose of which was to provide adequate security for the Government.

One of the plain objects of the Thurman act was to put a stop to the further payment by the Government of money to a corporation which was largely its debtor. It had undertaken to accomplish this by the passage of the act of 1873, section 5260 of the Revised Statutes, but under the decisions of the Court of Claims this statute afforded no adequate remedy, and Congress was again called upon to legislate upon the subject, and the result was the passage of the act in question.

The change of language or form of expression from the act of 1862 is also significant. In section 6 of that act, which relates to the Government service and compensation therefor, and also to the retention of 5 per cent. of the net earnings, the reference in each case is to the *road* built by Government aid, while the reference in section 2 of the Thurman act is to the amount of compensation which may be due to the *company* from the United States.

There are also other internal evidences, furnished by the act of 1878, which lead to the same conclusion. The fourth section speaks of the earnings in the Government service as "the whole sum earned by it (the company) as

compensation for services rendered for the United States." It also provides as the maximum amount to be contributed by the company to the sinking-fund the sum of $1,200,000, which, with the whole sum earned in the Government service and the 5 per cent. of net earnings, was designed to make up in the aggregate 25 per cent. of the net earnings of the company. But no such sum would have been necessary if the present contention of the company is well founded, for the reports of that year show that, computing the amount due the company from the United States and the 5 per cent. of net earnings upon the basis which the company now insists upon, they would amount to within $62,000 of the 25 per cent. of the net earnings of the subsidized portion of the road.

Congress apparently contemplated that the full sum of $1,200,000 might be required to make up the 25 per cent. of net earnings referred to in the act; but this could only happen in case the entire earnings of the company were intended; and, by making the necessary computations, it will be found that in each year subsequently the amount so required falls but little short of the sum named in the act.

The recitals in the act are also proper to be considered in determining its meaning and scope. In this act we find various recitals, by way of preamble, and, among others, the declaration that the Western Pacific Railroad Company has since its incorporation, and since the original incorporation of the Central Pacific Railroad Company, become merged in and consolidated with the latter under the name of the Central Pacific Railroad Company, and that "divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company."

Congress was legislating, not with reference to the Central Pacific Railroad Company as primarily organized, consisting only of that line of road which had been constructed by the aid of Government bonds, but it was deal-

ing with a company which had already absorbed many other companies, and which had taken on a new character and incorporated into its railway system so many lines of connection that its mileage had increased nearly threefold; and whenever, in the act, it speaks of the earnings of the company, or of the compensation due to the company from the United States, the language must be construed with reference to the existing status of the corporation at the time the earnings are realized or the compensation becomes due. Unless this construction is adopted, it will be difficult to determine what the net earnings of the aided portions of the company's lines are, or what proportion of the compensation due it for Government service has been earned upon the aided lines, for the system is managed by the company as an entirety, the earnings and expenses going into a common pool, and no separation can be made which must not depend, in a measure, upon arbitrary rules to be adopted by the company.

If mileage is to be adopted as the standard by which the earnings of the subsidized portion of the road are to be measured, it would be within the power of the company to absorb other connecting and parallel lines in which its stockholders may be interested, and the operation of which might be less profitable than that of the original line of the company, to such an extent as to reduce the share of the subsidized portion to a minimum; or, if the company owned and controlled parallel lines, it might divert the transportation in the Government service over those lines, and thus leave nothing due to be retained under the Thurman act.

The Auditor of Railroad Accounts, in his report to the Secretary of the Interior for the year ending June 30, 1879, at page 40, appreciating the consequences detrimental to the interests of the Government which would result from such a construction of the statute, and after demonstrating by reference to the reports of the company that the net earnings per mile had been reduced from

$6,509.37, in 1874 and 1875, to $4,332.42, in 1877 and 1878, by an increase of the mileage of the company's roads, says that, "If the Government 5 per cent. is to be computed on the amount of net earnings ascertained on the basis of mileage *pro rata*, these railroad companies have only to lease enough unprofitable lines, of which they may be themselves the owners, to reduce the Government 5 per cent., or 25 per cent. even, to a mere pittance."

There can be no question that under section 5260 of the Revised Statutes all the moneys due the company on account of freight or transportation were to be withheld to the amount of payments made by the United States for interest upon bonds issued by them to any such company, in addition to the 5 per cent. of net earnings which the act of 1862 authorized to be retained, and that Congress understood that the act of May 7, 1878, was not intended to permit the payment of any sums directed to be withheld by section 5260 is evidenced by the provision in chapter 183 of the laws of 1879, which directs the manner in which the Secretary of the Treasury shall make the entries upon the books of the Department in the adjustment of the accounts of the Pacific railroad companies. It is there provided that, for the proper adjustment of the accounts of the Central Pacific Company, and other companies enumerated, for services which have been or might thereafter be performed for the Government for transportation of the Army and of the mails, the Secretary of the Treasury was authorized to make such entries upon the books of the Department as will carry to the credit of said companies the amount so earned, or to be earned, by them during each fiscal year, and withheld under the provisions of section 5260 of the Revised Statutes and the act of Congress approved May 7, 1878. The reference here is to the entire earnings of the company for Government transportation, without limitation or apportionment, and the direction to the Secretary is explicit and unequivocal that the whole amount due the

company from the United States shall be carried to its credit under the acts aforesaid.

And so in the deficiency bill passed April 30, 1878, seven days before the passage of the Thurman act, in the clause making an appropriation for the transportation of the Army, there was inserted a proviso that no part of this sum should be paid to any railroad company, or to its assigns, on account of freight or transportation over their respective roads, unless there be an excess due such company after charging the amount of payments made by the United States for interest upon the bonds of the United States issued to any such company; but the same shall be paid to the Secretary of the Treasury, to be by him withheld, as directed by existing law. In this condition of the statutes, and the decisions of the courts upon the subject, a due regard for the protection of the public interests would seem to require the Secretary of the Treasury to follow the letter of the law and withhold payment of all moneys due the company for Government transportation. No injustice will be done, and no loss will accrue to the company in consequence of the adoption of this course, for all of the moneys withheld will be carried to the credit of the company, and either presently applied in the extinguishment *pro tanto* of the interest upon the subsidy bonds, which it is obligated to pay, or else safely invested for the benefit of the company, to be ultimately devoted, with its accumulation of interest, to the payment of the obligations of the company when they mature. The debtor company is in no wise harmed, while the Government, as a creditor, is, to this extent, made more secure.

With reference to the order of the late Secretary of January 12, 1884, it is difficult to see how it can longer be upheld. It was evidently intended only to be temporary in its operation, and it anticipated that some explanatory or remedial legislation by Congress would be had. But two sessions have since passed, and that body has manifested no disposition to further legislate upon the subject.

Under this order an approximate estimate shows that over $900,000 are now held *in suspenso*, having been neither paid to the company nor credited to them under the Thurman act. It is clear that the Government cannot properly refuse to act at all in the matter. It should either pay this money over to the company, or else it should be covered into the Treasury and invested and applied as required by the act of 1878. As the result of this review of the statutes and decisions upon the subject, I would respectfully submit the following recommendations:

First. That the circular letter or order of the Secretary of the Treasury of June 27, 1883, and that of January 12, 1884, be both revoked.

Second. That the amount of compensation due the company for Government service, heretofore audited by the accounting officers and not applied because of the directions in said order of January 12, 1884, should be covered into the Treasury, and one-half thereof applied to the extinguishment of interest which has meanwhile accrued on the Government subsidy bonds, and the other half credited to the sinking fund, as required by the Thurman act.

Third. Hereafter the accounting officers of the Treasury adjust the accounts of the company for compensation due it for Government transportation, and direct that the whole amount of such compensation be retained by the Secretary of the Treasury and applied in the manner pointed out by that act.

Fourth. No decision of the Supreme Court of the United States affecting the question having been made since the opinion of Attorney-General Devens, dated June 18, 1880 (16 Opinions, 517), was rendered, a further reference of the questions here involved to the Department of Justice would seem to be unnecessary.

I. H. MAYNARD,
Second Comptroller.

Department Circular No. 83, of June 27, 1883, and circular letter of January 12, 1884, are hereby revoked, and all compensation now due, or which may hereafter become due, the Central Pacific Railroad Company for services rendered for the Government will be withheld and applied as indicated in the above decision.

DANIEL MANNING,
Secretary.

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Office Supreme Court U. S.
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CLERK.

118-235

Supreme Court of the United States,

October Term, 1885.

THE UNITED STATES, *Appellant*,
vs.
THE CENTRAL PACIFIC RAILROAD CO. } No. 1291.

Appeal from the Court of Claims.

BRIEF FOR THE APPELLEE.

FRENCH & GIBBS PRS

Supreme Court of the United States,

October Term, 1885.

THE UNITED STATES, *Appellant*,
vs.
THE CENTRAL PACIFIC RAILROAD CO. } No. 1291.

Appeal from the Court of Claims.

BRIEF FOR THE APPELLEE.

STATEMENT.

The appellee brought suit in the Court of Claims to test the defendants' right to withhold compensation earned by it in Government service under the circumstances set forth in its petition (Rec. pp. 1-12.) The defendants demurred (Rec. p. 13) and upon due consideration the court below overruled the demurrer (Rec. pp. 13-19) and entered judgment for the amount claimed from which the defendants appealed (Rec. p. 19.)

The petition shows that the claimant was incorporated June 28, 1861, under the laws of California: that by the act of July 1, 1862, and other amendatory acts the defendants, for the public interest, made certain propositions (including aid by the loan of Government bonds) to it and to other companies to induce them to engage in the enterprise of constructing a railroad and telegraph line from the Missouri River to the Pacific Ocean; that these proposals were accepted by the claimant and so far carried out by it directly

or indirectly that it became the responsible proprietor of 865.66 miles of the bond aided road provided for in said acts (Rec. pp. 1-2.)

In addition to this mileage of bond aided road the claimant operated during the period from May 7, 1878 to April 1, 1885, 383.67 miles of road acquired by consolidation with other companies and 1791.35 miles of road leased from other companies, no part of which had been aided as aforesaid by the defendants (Rec. p. 2.)

The claim is for compensation for services rendered to the defendants on the said unaided 2,175.02 miles of road and is brought by agreement as a test case (Rec. pp. 3-4.)

Argument.

The question raised by the demurrer is whether anything in the second section of the act of May 7, 1878 (20 St. 56.) requires, or can lawfully require these earnings to be withheld from the company.

That section is as follows:

"That the whole amount of compensation which may from time to time be due said railroad companies respectively, for services rendered for the Government, shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid, and to be paid, by the United States upon the bonds so issued by it as aforesaid to each of said corporations, severally, and the other half thereof to be turned into the sinking fund hereinafter provided for the uses therein mentioned."

There is no specification in this language (or elsewhere in the act) of the compensation here in question as subject to appropriation. The intent to include it as a part of the "whole amount of compensation" mentioned, has to be inferred from the generality of the expression "services rendered for the Government," so that the precise issue raised is whether by use of that language it was intended to apply toward payment of the debt for bonds loaned to build said 865.66 miles of road the compensation for services on such aided road only or to appropriate for that purpose the

earnings of the company in Government service without limitation as the defendants contend.

There is no conclusiveness and indeed but little strength in the latter position, as it is a well settled doctrine of construction that general words will be limited to the particular subject matter intended. Vattel says: "If the subject or matter treated of, will not allow that the terms of a disposition should be taken in their full extent, we should limit the sense according as the subject requires (Potter's Dwarris 129.) In U. S. vs. Kirby, (74 U. S., 486,) this Court said: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter." Again in Reiche vs. Smythe, (80 U. S. 164,) the Court said: "The act of 1866 in its terms is comprehensive enough to include birds, and all other living things endowed with sensation and the power of voluntary motion, and if there had not been previous legislation on the subject there might be some justification for the position that Congress did not intend to narrow the meaning of the language employed. If it be true that it is the duty of the Court to ascertain the meaning of the legislature from the words used in the statute and the subject-mrtter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so in order to carry out the legislative intention. And it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject matter."

Relying on the principles thus laid down the appellee contends that unless the expression "services rendered for the Government" in the act of 1878 is construed as applicable only to services on the said bond aided mileage, the injustice will result of compelling "the corporation to discharge

its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection," which this Court in construing this very act in the Sinking Fund Cases, (99 U. S., 718-719,) said could not be done.

The Court in those cases defined the contract expressed in the acts of 1862 and 1864 so far as here material as follows: "The contract of the company in respect to the subsidy bonds is to pay both the principal and interest when the principal matures unless the debt is sooner discharged by the application of one-half the compensation for transportation and other services rendered for the Government and the five per centum of net earnings as specified in the charter."

As the question here presented was not involved in those cases, it was not passed upon and it remains to be determined what services the parties to the contract of 1862, intended to be applied to the discharge of the bond debt.

The terms of the contract are found in sec. 6 of the act of 1862, as follows:

"That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity * * * * * * and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid * * * and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

This was modified by section 5 of the act of July 2, 1864, as follows: "And that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads."

It will be observed that the expression "services rendered for the Government" employed in the act of 1878 is copied literally from the original contract provisions and must therefore as was held in Reiche vs. Smythe be taken there

in the same sense in which it was used in the former acts, so that in any aspect the question becomes one of construction of the original contract.

It cannot be doubted that the railroad and telegraph line mentioned in the 6th section of the act of 1862 was that road and line which the company had been authorized to to build for each mile of which a bond loan was promised and given, and on which aided mileage the delivery of the bonds was declared by the 5th section to constitute a mortgage.

It is this bond aided road and line and no other on which the company is required by section six to render certain described services for the Government with an important condition of preference. When therefore that section proceeds to declare that the company's services to the Government and five per centum of its net earnings shall be applied to payment of the bond loan, is it conceivable that any other services were contemplated by either party than those already described and which were to be rendered on the aided road and line? Surely no other subject matter was then in the legislative thought, for the region through which the proposed road was to pass was a wilderness and its construction was considered so doubtful an experiment that Congress deemed it necessary in 1864 to offer far greater privileges and inducements to get the work done.

In U. S. vs. U. P. R. R. Co., (91 U. S., 79,) this Court declared that these provisions of the act of 1862 cannot be properly construed without reference to the circumstances which existed when it was passed and it proceeded to point out some of the urgent national necessities which made its construction essentially a national undertaking and impelled Congress to extend to it unusual liberality in national assistance and further said "But the primary object of the Government was to advance its own interests, and it endeavored to engage individual co-operation as a means to an end, the securing a road which could be used for its own purposes. The obligations therefore which were imposed on the company incorporated to build it must depend on the true

meaning of the enactment itself viewed in the light of contemporaneous history."

The essence of this decision is that in the provisions of the acts of 1862 and 1864 Congress for the public interest intended to deal liberally with the companies and that in construing those provisions the courts are to be guided by that fact. The defendants' view would however require the court to hold that Congress in 1862 was not content with stipulating for payment from the earnings of the road it was trying to induce the companies to build but was reaching out to appropriate their earnings on other roads that it had not aided, which would be not merely illiberal but unjust, and was not intended, as can be demonstrated from the contract act itself, for it so happened that one or more of the corporations authorized to take part in constructing the proposed railroad had already a railroad line in operation. The Hannibal and St. Joseph R. R. Co. for instance, which was authorized to build 100 miles of bond aided road west of St. Joseph had already a road extending 206 miles from the Mississippi to the Missouri, but Congress was careful to provide in the 5th section of the act of 1862 and in the 11th section of the act of 1864 that no land or bond subsidy should be given on account of any previously constructed road, thus confining the benefits of the act to such road only as should thereafter be built in accordance with its conditions. The only just inference from this can be that the burdens of the act were intended to be proportioned to the benefits received and that only the bond aided road and line therefore was expected to provide for the bond debt. The last clause of section 12 of the act of 1862 confirms this view as does also the first clause of section 18.

The fact should not be overlooked in this connection that the property of the company here brought into controversy was acquired and possessed under State and not under Federal authority and is not to be regarded as subject to national control unless it shall appear by the contract to have been submitted thereto which will hardly be pretended.

Many other equally strong reasons might be presented to sustain the claimant's construction of the contract in this particular but it can hardly be necessary to recite them in view of the fact that the question has been passed upon by this Court in suits which presented it under far more favorable circumstances for the defendants than in the present case.

The United States brought suit against the Kansas Pacific R. R. Co. in the Circuit Court in Kansas to recover the five per centum of net earnings payable under section 6, of the act of 1862, claiming it on the earnings of the entire road from Kansas City to Denver, built and operated by the company, whereas the company contended it was recoverable only on the earnings of the Eastern $393\frac{15}{16}$ miles which had been constructed with aid of bonds as provided in the before mentioned acts.

Concurrently the Denver Pacific R. R. Co. which as assignee of the last named company had built the connection of about 100 miles between Denver and Cheyenne (originally authorized to be built by the Kansas Co.) brought suit in the Court of Claims to recover the compensation earned by it in services rendered for the Government on its road, which the Secretary of the Treasury had withheld. The defendants filed a counter claim for five per centum of the net earnings on said road.

Inasmuch as the assignment by the Kansas Co. to the Denver Co. (ratified by Act March 3, 1869. 15 Stat., 324), was on condition that the assignee should be subject to all the obligations of the assignor toward the United States attaching to that part of the grant assigned, the vital question was whether the Kansas Co. which had been authorized to construct a road from Kansas City to connect with the Union Pacific Co's. road at Cheyenne, with right of way, and land grant for the entire distance, but with bond subsidy for a distance only of $393\frac{15}{16}$ miles from Kansas City, was under obligation by its contract with the United States to pay its bond debt from the earning for Government and other ser-

vice on the entire line or only from such earnings on the bond subsidized part thereof.

In the Kansas Co's case (99 U. S., 458,) this Court held that as by the 5th section of the act of 1862, the mortgage lien is confined to the road and appurtenances, in consideration of which the bonds were issued, the stipulation of the 6th section for payment out of net earnings could not be reasonably applied to any other portion of the line.

In the Denver Co's. case, (99 U. S., 462,) where both phases of the question of payment were presented, the Court said, after referring to the last-mentioned decision, "of course that decision controls the present case," and afterwards added, "We cannot conceive on what principles the retention (of earnings for Government service) can be claimed since the object of retaining the compensation for such services or any portion thereof as expressed in the 6th section of the act of 1862, was to apply the amount so retained to the debt due to the Government for subsidy bonds granted to the companies that should receive the same."

Thus, we contend, the precise question now presented has been determined by this Court, and the Court below reached the same conclusion as its opinion shows.

It follows that the efforts of the appellant to show from other parts of the act of 1878, and otherwise, that Congress intended by the section in question, to extend the contract right of retention of compensation for services so as to include services on unaided roads operated by the Company, must be futile, for as this Court declared in the Sinking Fund cases, that no material alteration of the contract can lawfully be made by Congress without the assent of the Company, an explicit declaration even of such an intent would not avail, and in the absence of some such unmistakable expression of the legislative purpose the Court would presumably hold that Congress did not intend to enact that which it had no constitutional authority to require. (U. S. vs. Coombs, 12 Pet., 75.)

There is plausibility in the view that the Government as creditor of the Company should have the right to set off

any debt to the Company, and this was strongly urged in the Union Pacific R. R. Co's. case, (91 U. S., 72,) but this Court held that it was not a question to be determined on general principles, but by the terms of the agreement, and that the Government having stipulated to pay one-half the compensation, must carry out the agreement, even though its chance of securing the re-payment of the bonds and interest advanced, should be lessened thereby ; it could not improve its security at the expense of its good faith : so here, if the contract was that the debt should be paid currently from earnings of the *subsidized* road, no other income of the Company can be attached for payment or for security.

McDONALD, SIMONS & BRIGHT,

Counsel for Appellee.

118-235

Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1885.

THE UNITED STATES,
Appellant,

1291. *vs.*

CENTRAL PACIFIC RAILROAD COMPANY,
Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF.

JOHN F. DILLON,
For the Railroad Company.

BURGOYNE'S "Quick" Print, 146-150 Centre St., N. Y.

STATEMENT OF FACTS.

THE CENTRAL PACIFIC R. R. Co. (the claimant and appellee) owns $865\frac{66}{100}$ miles of bond subsidized road, built under the Acts of July 1, 1862, and July 2, 1864.

Record, p. 2.

It acquired by consolidation and owned prior to May 7, 1878 (date of Thurman Act) certain non-aided roads.

Record, par. 4, p. 2; Exhibit A, p. 5.

Prior to May 7, 1878, it also became the lessee of certain other non-aided roads (Record, pp. 2, 5; Exhibit B); and *after* that date also became the lessee of certain other non-aided roads.

Record, pp. 2, 5; Exhibit C.

The length of such non-subsidized roads in Exhibits A, B and C is 2,175.02 miles.

Record, p. 14.

THIS SUIT IS BROUGHT TO RECOVER for Government transportation services rendered by the claimant in 1883 and 1884, upon non-subsidized roads of the character described in Exhibits A, B and C, amounting to $22,453.82.

Record, pp. 3, 4.

The action embraces no claim in respect of services on aided or subsidized roads.

Record, p. 12.

The United States filed a demurrer on the ground that no cause of action is stated.

Record, p. 13.

The demurrer was overruled; defendant declined to plead further and judgment was entered for the claimant for $22,453.82.

Record, p. 19.

The United States appeals.

Brief of Statutes and Decisions.

The only question presented below was that the whole compensation due the claimant on *non-subsidized* as well as subsidized roads is required to be retained by the United States under section 2 of the Act of May 7, 1878, commonly called the "Thurman Act."

Record, p. 14.

This proposition the claimant denies.

Under the Acts of 1862 and 1864, only $865\frac{66}{100}$ miles of claimant's road were subsidized with bonds.

Sec. 6, Act 1862, as amended by Sec. 5, Act 1864, constitute the statutory contract between the United States and the companies.

U. S. vs. U. P., 91 U. S., 72, 1875.
Sinking Fund Cases, 99 U. S., 700, 718, 1878.
U. P. vs. U. S., 104 U. S., 662, 1881.

Such contract is binding upon the United States, which cannot by subsequent legislation impair its obligation without the consent of the companies.

Same cases.

Interest on subsidy bonds is not due until 30 years after their date, except as payments may be made from "one-half of the compensation for services" to the United States to be withheld under the Act of July 2, 1864, and from 5% of net earnings to be so annually applied.

U. S. vs. U. P. R. R. Co., 91 U. S., 72, 1875.
Sinking Fund Cases, 99 U. S., p. 719.

ACT MARCH 3, 1873 (Rev. St., §§ 5260, 5261), did not authorize the United States to withhold compensation from any company which did not receive aid in subsidy bonds, or compensation for service on non-subsidized portions of the road of a susidized company whether owned, or held by lease, or controlled by ownership of stock or otherwise.

1. Note the words in Sec. 5260, "interest upon the bonds of the United States issued to any such company." That is, the right to withhold payment is limited to the companies to which subsidy bonds were issued.

2. "As provided by law," *i. e.*, the law of July 1, 1862, and July 2, 1864. So decided in the Interest case, 91 U. S., 78, 91.

Act of March 3, 1873, was not passed to create new obligations, but to secure a judicial settlement under the Acts of 1862 and 1864.

Lien of United States extends only to the mileage aided by bond-subsidy. United States is entitled to only five per cent. of net earnings of such *aided* part, and one-half of compensation for Government service of such *aided* part.

U. S. vs. K. P. Ry. Co., 99 U. S., 455, 1878.

U. S. vs. Denver P. Ry. Co., *Ib.*, 460.

So held by Court of Claims.

U. P. Ry. Co. vs. U. S., 16 Ct. of Clms., 353.

Central Branch Co. vs. U. S., *Ib.*, 361.

Appeals abandoned by United States.

Prior decisions reviewed and followed, and practice of the Treasury Department stated in Utah and Northern Ry. Co. vs. U. S., and in the Pacific Railroads vs, U. S., by LAWRENCE, First Compt.

4 Lawrence Decisions, 188, 214.

THE THURMAN ACT of May 7, 1878 (20 Stats., 58), does not authorize the United States to withhold the compensation due from a railway company which did not receive bonds, or to withhold compensation for services on non-subsidized portions of the road of a subsidized company, whether owned, held by lease, contract or otherwise.

Preamble recites the bond-subsidized companies by name.

SEC. 1. Declares how the net earnings provided for in the Acts of 1862 and 1864 shall be ascertained.

SEC. 2. "That the whole amount of compensation

which may from time to time be due to said several railroad companies, &c., shall be retained," &c.

"The several railroad companies" mentioned in section 2 are the bond-subsidized companies mentioned in the preamble, and the Act of 1878 applies alone to those companies.

U. P. Ry. Co. vs. U. S., 16 Ct. of Clms., 359.
Union Pacific Ry. Case, 20 Ct. of Clms., 102.

The argument in favor of the conclusion reached by the Court of Claims in the case at bar, is well stated in the opinion of that Court given by RICHARDSON, C. J., and printed in the Record, pp. 13, 18.

THE SCHEME OF THE THURMAN ACT IS PLAIN. It did not profess to change the contract made in 1862 and 1864. The 5% net earnings reserved and provided for by section 6 of the Act of 1862 was left untouched. And so the half compensation provision of the Act of 1864, for the benefit of the United States, was left untouched. Both this 5% and this half compensation for Government service, the Thurman Act says, shall be applied according to the terms of the Acts of 1862 and 1864; that is, to the liquidation of interest on the subsidy bonds.

The other half of such compensation, that is, the half that under the Act of 1864 was payable in cash to the companies, the Thurman Act "turns into" (Sec. 2) the Sinking Fund established by the 3d section of that Act; and by section 4 there is also to be paid into the Sinking Fund each year a certain sum of money, as prescribed by that section.

The meaning of the words in section 2 of the Act, viz., "The whole amount of compensation which may from time to time be due said several railroad companies respectively, for services rendered for the Government, shall be retained by the United States, one-half thereof to be presently applied to the liquidation of interest, and the other half thereof shall be turned into the Sinking Fund," is too plain to admit of fair controversy. "The whole compensation" is made up of the two specified halves; and these two halves had been decided to be under the contract limited to the earnings of the subsidized roads or subsidized portions thereof.

U. S. vs. Kansas Pacific Ry. Co., 99 U. S., 455.

U. S. vs. Denver Pacific Ry. Co., 99 U. S., 460.

The contract of 1862 and 1864, this Court says, is as binding upon the U. S. as are the contracts of individuals.

Sinking Fund Cases, 99 U. S, 719.

And the only ground upon which the Sinking Fund provisions of the Thurman Act was sustained by the Court was that they did not touch, change or impair the original contract between the Government and the companies.

THE ACT OF MARCH 3, 1879 (20 Stats., 420), has no application to or effect on the question now presented. It does not change the legal rights and duties of the companies or the U. S. under the Act of 1873 (Rev.

Stats., § 5260), or the Thurman Act, or under existing laws. It so says in express words. It only directs a system of bookkeeping for the purposes mentioned.

JOHN F. DILLON,
For the Railroad Company.

April 23, '86.—50.